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September 13, 1994

Office of the Secretary
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

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SEP 14 1994

Re: Billed Party
Preference for 0+
InterLATA Calls
FCC Docket No. 92-77

Dear Sir/Madam:

Enclosed please find the original and nine copies of the reply comments of the Public Utility Law Project of New York, Inc. in the above captioned proceeding.

Sincerely,

Trudi Renwick

Trudi Renwick, Ph.D.
Economic Policy Analyst

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter Of X
X
BILLED PARTY PREFERENCE X
FOR 0+ INTERLATA CALLS X
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CC Docket No.92-77

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SEP 14 1994

REPLY COMMENTS OF THE
PUBLIC UTILITY LAW PROJECT OF NEW YORK INC.

PUBLIC UTILITY LAW PROJECT
OF NEW YORK, INC.

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Date: September 14, 1994

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SUMMARY

The Public Utility Law Project of New York (PULP) is a public interest law firm representing the interests of low-income utility and energy consumers. PULP respectfully submits these reply comments on the specific issue of whether customers receiving calls from correctional institutions should have the benefit of Billed Party Preference (BPP).

The arguments of those who would exclude prison phones from BPP are based on the false premise that the current system works well. PULP has provided evidence that the current system subjects the families of prisoners to abuses which go beyond high rates. Those opposed to the inclusion of inmate phones have failed to provide compelling justification for denying the families of prisoners the benefits of BPP. Inmate calls should not be excluded out of concern for the impact of lost commission revenues on prison budgets. Worthwhile prison programs should be funded from general tax revenues, not from a special tax on innocent relatives. Finally, the argument that the FCC does not have the authority to impose BPP on inmate telephones is based on the citation of a single sentence out of context from a Commission order.

PULP therefore urges the FCC to include calls from inmates in the BPP system. Consumer-oriented competition in this market can be expected to bring down rates and stimulate the providers of these services to halt abuses and improve service quality.

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REPLY COMMENTS OF THE
PUBLIC UTILITY LAW PROJECT OF NEW YORK INC.

INTRODUCTION

The Public Utility Law Project of New York (PULP), a public interest law firm representing the interests of low-income utility and energy consumers, submits the following reply comments pursuant to the Further Notice of Proposed Rulemaking (FNPR) issued May 19, 1994. The principal focus of these comments is PULP's response to some of the arguments made by Gateway Technologies, Inc. (Gateway) and the Inmate Calling Service Provider Task Force (ICSPTF) regarding the implementation of a billed party preference(BPP) system for 0+interLATA payphone traffic and for other types of operator-assisted interLATA traffic in confinement facilities. Silence on any issue not discussed herein does not imply concurrence with the position taken by any other party.

In New York State, the more than 65,000 prisoners held in state-administered correctional facilities communicate with family and friends through the Inmate Call Home Program operated

by the New York State Department of Correctional Services (DOCS). Since its inception in 1985 the program mushroomed from 50 coinless phones at a single facility to a statewide system with over 2,300 phones. There are at least another 3,000 inmate-only phones in county and city correctional facilities in New York State.

For the families of prisoners in New York State, the current system of collect-only calls represents a pure monopoly. Prisoners wishing to make telephone contact with their families must use the single authorized provider to place these calls.¹ The person who accepts these calls must accept the rates and conditions established by this single provider.

I. ARGUMENTS AGAINST THE INCLUSION OF PRISON PHONES IN A BPP SYSTEM ARE BASED ON THE INCORRECT PREMISE THAT THE CURRENT INMATE TELEPHONE SYSTEM WORKS WELL

The arguments against the inclusion of prison phones in a BPP system are based on the incorrect premise that the current inmate telephone system works well. According to GATEWAY, "BPP for the correctional institution market is a 'solution in search of a problem.'"² PULP strongly disagrees with this premise. While the current system may work extremely well for the providers of prison phone systems, the current system represents a serious problem for the families of prisoners who are burdened

¹ The New York State Department of Corrections contracts with Value Added Communications Inc. City and county facilities similarly contract with a single authorized provider. See PULP Comments at 2.

² Further Comments of GATEWAY at 26.

with excessive phone bills and abusive practices of monopoly service providers.³

II. THOSE WHO OPPOSE THE INCLUSION OF INMATE PHONES HAVE FAILED TO MEET THE BURDEN OF PROOF THAT THE EXCLUSION OF THE FAMILIES AND FRIENDS OF INMATES SERVES A COMPELLING PUBLIC INTEREST.

The Comments of ICSPTF and Gateway list numerous reasons why they would prefer that inmate phones be exempted from BPP. They fail, however, to meet the burden of proof required to sustain this exemption. They have not shown a compelling public interest sufficient to justify the exclusion of these calls from a general BPP system.

For example, ICSPTF argues that inclusion of inmate phones in BPP would constitute micromanagement of inmate facilities by the FCC. PULP appreciates that telephone use, or denial thereof, can be a tool for prison management. ICSPTF asserts that prison officials must have the ability "to exercise unfettered control over inmate calls in their entirety" but fails to show why prison officials need to control the way in which long distance calls are routed.⁴ ICSPTF itself argues that customer premise equipment (CPE) is key to the control of inmate phone use.⁵

The example provided by ICSPTF of why prison officials need to control the network speaks for itself.

An extreme, but not entirely far fetched, example of how the CPE could rendered ineffective would be for a criminal

³ See Exhibit 1 of PULP's Comments.

⁴ Further Comments of ICSPTF at 6.

⁵ See ICSPTF Further Comments at 14.

organization to create a new long distance company, or perhaps gain control of an existing carrier, to which the "friends and family" of an inmate would "PIC" their phones. Regardless of the PINs, blocked numbers or other control features in place at the facility, once the call entered the network of the inmates "friends and family" carrier, the inmate would be free to call the world. The carrier could re-route the call to a number different than the number dialed, and prison officials would not know where those calls were terminating. Calls could be billed to third numbers, witnesses, victims, etc.⁶

This example demonstrates the importance of CPE for controlling calls. It is our understanding that the software that currently prevents three-way calling is CPE, not network-based, and would continue to prevent even this far fetched example of abuse.

III. CONCERN FOR THE AVAILABILITY OF INMATE PHONES IS NOT SUFFICIENT GROUNDS TO EXCLUDE THEM FROM BPP

ICSPTF and GATEWAY assert that BPP would reduce inmate phone availability by taking away the revenue base supporting inmate telephone equipment. As PULP argued in its Initial Comments, this "revenue base" consists of exorbitant rates paid by indigent friends and families of prisoners. If the availability of telephones is essential to the administration of the correctional system, then the cost of these systems should be borne by the society as a whole, not by the indigent families of the inmates.

Gateway argues that "BPP would destroy the economic incentive of carriers to supply this expensive equipment, requiring correctional administrators to purchase the CPE."⁷

⁶ Further Comments of ICSPTF at 16.

⁷ Gateway Comments at 2.

Implementation of BPP would modify the revenue base supporting inmate telephone equipment but not necessarily eliminate the provision of telephone equipment in correctional institutions. As noted by PULP in its Initial Comments, alternatives to collect-only phones currently operate successfully in federal prisons and some local facilities.⁸

Citizens United for Rehabilitation of Errants (CURE) notes that the existing revenue base supporting inmate telephone equipment will not be eliminated by BPP since local (intraLATA) collect calls would not be subject to BPP. CURE argues that nationwide the "bulk of prison telephone traffic would be made up of calls from state or city/county inmates to their families and friends within the LATA."^{9 10}

IV. PRISON PHONES SHOULD NOT BE EXCLUDED FROM BPP IN THE INTEREST OF MAINTAINING THE CURRENT FLOW OF COMMISSIONS.

ICSPTF argues "in addition to reducing inmate phone availability, BPP would also abolish the beneficial inmate programs that have been financed by the current system."¹¹ In a similar vein, Gateway notes that commissions "are used by state and local correctional administrators to finance important inmate welfare services, avoiding the need for tax increases to meet

⁸ See PULP's Comments at 12.

⁹ See CURE Comments at 7.

¹⁰ While this may be true nationwide, most state correctional facilities in New York are located outside the LATA of the inmates. See PULP Comments at 5-6.

¹¹ ICSPTF Comments at 19.

prison budget requirements." PULP addressed and refuted this argument in its initial comments.¹² Sprint concurs that maintaining the flow of commissions to prisons is not a sound public interest consideration, stating:

Obviously, all public phone premises owners -- hotel chains, convenience stores, airport authorities and the like -- have become accustomed to the commissions that they have been paid under the present system of presubscription. However, the understandable desire to maintain that flow of commissions cannot be determinative of the public interest, since it is these commissions which create the economic incentives that account for many of the abuses under the current system. Although Sprint does not doubt the legitimate need by prisons for adequate funding, it might be particularly inequitable, from the viewpoint of social policy, if this funding came at the expense of above-normal charges for collect calls made to the families of prisoners.¹³

The families of prisoners should not be denied the benefits of BPP in order to protect inmate-phone commissions. These commissions represent a special tax imposed on the families and friends of prisoners. Even if all states used these revenues to fund worthwhile prison programs and services, the FCC should not encourage the tax. Since many families of prisoners are indigent, the imposition of this special tax on those least able to pay is particularly poor, if not perverse, public policy. If the FCC excludes the calls from correctional facilities from BPP on these grounds it will be condoning anti-competitive practices and inflated rates to achieve state purposes unrelated to telecommunications.

¹² See PULP Comments at 13.

¹³ Comments of Sprint Corporation at 40.

V. RATE CAPS DO NOT PROVIDE SUFFICIENT PROTECTION FOR THE FAMILIES OF INMATES AND CANNOT SUBSTITUTE FOR SERVICE QUALITY COMPETITION

SPRINT believes that an exclusion of inmate phones conditioned on presubscription to an OSP whose rates do not exceed those of the dominant carrier "would protect the public -- particularly families of inmates -- from abuses that they may be subjected to at the present time and would be reasonable condition for exclusion of the phones from BPP."¹⁴

While price competition and lower rates are the principal benefits expected from the transition to Billed Party Preference, giving consumers the ability to choose carriers is also critical to maintaining service quality and preventing abusive practices. Providers of ordinary long distance services who mistreat customers or offer substandard service risk the loss of these customers to competitors.

Monopoly providers of collect-only services, even with a rate cap, face no such risk. The families of inmates must either meet the terms set by the providers or forego telephone communication with incarcerated family members. Consequently, the providers are able to continue practices that would be untenable in the face of competition.¹⁵ With Billed Party

¹⁴ Sprint Comments at 41.

¹⁵ See PULP's Comments at 9, Note 19 for a description of some of these practices. Exhibit 1 of PULP's Comments contains copies of correspondence from Prisoners' Legal Services detailing abusive practices.

Preference customers not satisfied with their treatment by their chosen long distance carrier could take their business to a competing carrier.¹⁶ As noted by the Missouri Public Service Commission:

Although we will not deny the synergies of prison populations or their symbiosis with payphone providers, we can see no reason to deny those to whom prisoners may call collect the benefits of BPP. Furthermore, under BPP, as the carrier of the call will have a continuing customer relationship with the person who will be paying the bill, the carrier will probably be more responsive to customer's billing complaints.¹⁷

The FNPR notes that one of the three principal benefits of Billed Party Preference would be that it would lead OSPs to "refocus their competitive energies on serving end users rather than paying commissions for the 0+ traffic from public phones."¹⁸ Those who support the exclusion of inmate-only phones have failed to provide any justification why the families of inmates should be denied this benefit or why precious regulatory resources should be diverted to police service quality for this rapidly burgeoning market.¹⁹

Finally, rate caps would only protect the families of prisoners against the most exorbitant price gougers. Most

¹⁶ In the absence of BPP and with the rapidly growing prison population and rapidly growing prison telephone industry one might expect a growing regulatory burden to police service quality and billing and collections practices of inmate phone providers.

¹⁷ Comments of the Missouri Public Service Commission at 5 and 6.

¹⁸ FNPR at 6.

¹⁹ See Comments of PULP at 10-11 and Exhibit 2.

families would still pay excessive telephones rates for collect calls from correctional facilities. Since competition would still be directed towards prison administrators (who due to commission payments have an interest in maximizing bills) there would be no incentive to price at anything less than the rate cap. A rate cap based on the charges of the dominant carrier(s) would still allow providers to charge operator-assisted rates for fully-automated calls. The system would ensure that the economically disadvantaged families of prisoners would pay almost the highest rates.

VI. FAILING TO EXTEND BPP TO INMATE PHONES WOULD NEEDLESSLY ADD TO THE SUFFERING OF INNOCENT AMERICAN FAMILIES

While there is understandably little public sympathy for the phone rates paid by prisoners, the current system unfairly burdens the families of the prisoners, not the prisoners themselves. These families are predominantly low-income.²⁰

The following example illustrates the kind of suffering engendered by the current system. A prisoner wrote to Prisoners' Legal Services with the following crisis:

I have a mother ... who is diagnosed as having terminal cancer whom I can no longer call because of this phone block. My mother is in the Jewish Hospital and Home for the Aged....

As a result of her condition, she is not able to conduct any business matters. My sister has been handling all of the business affairs including the phone bills. My sister has assured me that she was only two (2) days late in paying the phone bill for my mother. A two day delay in paying a bill does not warrant a phone block -- especially

²⁰ See PULP Comments at 7.

in light of a family crisis. And to make matters worse, phone blocks are for six (6) month time period.²¹

A rate cap plan would not have prevented this injustice while BPP would enable this nursing home resident to switch to a different carrier.

VII. INMATE-ONLY PHONES ARE SUBJECT TO COMMISSION REGULATION

ICSPTF and Gateway argue that the Commission order implementing the Telephone Operator Consumer Services Improvement Act (TOCSIA) exempted inmate phones from all Commission regulation. ICSPTF based its conclusion on a sentence of the order which is cited out of context.²² ICSPTF cites the following sentence:

Accordingly, inmate-only phones at correctional institutions will not be subject to any requirements under the Act or the Commission's rules.

The rules read:

We are persuaded that the provision of such phones to inmates presents an exceptional set of circumstances that warrants their exclusion **from the regulation being considered herein**. Accordingly, inmate-only phones at correctional institutions will not be subject to any requirements under the Act or the Commission's rules.²³ (Emphasis added.)

Read together, it is clear that the "Commission's rules" referenced in the second sentence are those rules implementing

²¹ Excerpt from a letter to Prisoners' Legal Services contained in Exhibit 1 of PULP's Comments.

²² Further Comments of ICSPTF at 7 and 8 and Comments of Gateway at 3.

²³ Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 2744, 2752 (1991).

TOCSIA and regulations "being considered herein" not all Commission rules.

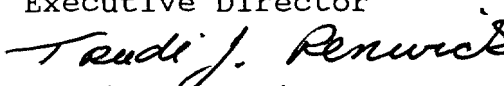
CONCLUSION

PULP urges that calls from inmates be included in the Commission order on BPP. Those opposed to the inclusion of inmate phone systems have failed to show that the denial of the benefits of BPP to the families and friends of prisoners serves a compelling public interest.

- Control over inmate calls will not be impaired under BPP.
- Alternative mechanisms exist to fund the provision of specialized CPE equipment.
- Commissions from collect-only phones are not an appropriate means to finance prison administration. Worthwhile prison programs should be funded from general tax revenues, not from a special tax on innocent relatives.
- Rate caps do not provide sufficient protection against abusive collection practices and poor service quality.

Respectfully submitted,

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